IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4268 of 2004

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HEMALIBEN PATEL - Petitioner(s)
Versus
UNION OF INDIA & 1 - Respondent(s)

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Appearance :

MR PH PATHAK for Petitioner(s) : 1,
MR JITENDRA MALKAN for Respondent(s) : 1,
MR PS PATEL for Respondent(s) : 2,
MR KK SHAH for Respondent(s) : 2,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 08/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. Heard learned Counsel Shri P.H.Pathak for the petitioner, Shri Malkhan, learned Asstt. Solicitor General for the respondent no.1-Union of India and Shri P.S.Patel for private respondent no.2.

2. The petitioner has challenged in this petition the observation made by the Tribunal in paragraph 22 of its impugned judgment and order dated 27-2-2004 passed in O.A.Nos.61/2002 & 396/2003 that the appointment of private respondent-present petitioner needs to be quashed. Before approaching this Court by way of the said petition, the petitioner had approached the learned Tribunal by way of Review Application no.29 of 2004 which was also dismissed by the learned Tribunal on 29-3-2004. Both these impugned orders at Annexures 'C' & 'E' passed by the learned Tribunal are challenged in this petition.

3. Having heard the learned Counsel for the parties, it is clear that there was no such prayer made by the present private respondent no.2-original applicant in his application filed before the learned Tribunal to declare the appointment of present petitioner as illegal, and therefore, it may be quashed. Therefore, no such argument was advanced on behalf of the present petitioner before the learned Tribunal. What was challenged by the original applicant-private respondent no.2 was his termination which was declared to be illegal, and therefore, quashed and set aside. However, while quashing and setting aside the termination, the Tribunal in its impugned order observed that the appointment of the private respondent-present petitioner needs to be quashed. When Review Application was filed by the present petitioner before the learned Tribunal along with the affidavit of Shri Pathak who had appeared and argued the matter on behalf of the petitioner in said review application, the said review application was also rejected on the grounds mentioned in it.

4. Under the circumstances, we have no option but

to quash the observations made by the learned Tribunal in paragraph 22 of its order dated 27-2-2004 Annexure 'C' that “... ... ... the appointment of private respondent also needs to be quashed.”. Accordingly, the part of the order containing aforesaid observation in the impugned order passed by the Tribunal (Annexure 'C') is quashed. Once the observation made in the impugned order Annexure 'C' is quashed, then the subsequent order dated 29-3-2004 passed by the learned Tribunal in review application Annexure 'E' is required to be quashed and accordingly it is quashed.

5. We make it clear that we have not interfered with the rest of the order (Annexure 'C') passed by the learned Tribunal in favour of the original applicant at present private respondent no.2. We also make it clear that it will be open to the respondent no.1-Union of India to pass appropriate order regarding quashing of the appointment of the present petitioner strictly in accordance with law only after extending an opportunity of hearing to him if it comes to the conclusion that the appointment of the

present petitioner was illegal. With these observations and directions, this petition is allowed to the aforesaid extent only. Rule is made absolute with no orders as to costs.

(B.J.Shethna,J.)

(M.D.Shah,J.)

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